IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

POLK COUNTY BOARD OF REVIEW, Petitioner, vs. PROPERTY ASSESSMENT APPEAL BOARD, Respondent.	NO. CV7285 RULING ON PETITION FOR JUDICIAL REVIEW

The above captioned matter came before the Court for hearing on May 27, 2009, on a petition for judicial review. The Petitioner, Polk County Board of Review ("Board"), was represented by Assistant Polk County Attorney Ralph E. Marasco, Jr. The Respondent, Property Assessment Appeal Board ("PAAB"), was represented by attorney Jessica Braunschweig-Norris and the Intervenors, Lawrence C. and Teri Jungblut ("Jungblut"), were represented by attorney Christopher R. Pose. After hearing the arguments of counsel and reviewing the court file, including briefs filed by the parties and the certified administrative record, this Court now enters the following ruling:

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

This case arises out of the assessment of property located at 4349 SE 112th Street, Runnells, Iowa ("Property"), owned by Jungblut. The Property consists of approximately 10.45 acres. Jungblut built a 2520 square foot one-story ranch dwelling on the Property in 2005 and first occupied the dwelling in August of 2005. At the time Jungblut purchased the property and built the dwelling, the Property was classified as residential and was zoned for both residential and agricultural uses.

On January 1, 2007, the Property was assessed as residential and valued at $417,000—allocated $86,000 to the land value and $330,400 to the building value. On June 5, 2007,

Jungblut protested the assessment and requested the Property be reclassified as agricultural. In response, the Board determined the residential classification and land value should remain unchanged, but increased the value of improvements to $338,499 by adding the value of a barn that was omitted from the original assessment. Jungblut then timely filed an appeal to the PAAB. After an evidentiary hearing on March 3, 2008, the PAAB ordered Jungblut's property to be classified as agricultural on July 24, 2008. The assessed value of the dwelling remained unchanged. The Board filed a petition for judicial review on August 13, 2008, and an amended and substituted petition on August 25, 2008. Jungblut intervened in this matter on October 21, 2008. Both parties filed briefs.

The following facts were found by the PAAB in its July 24, 2008, ruling and the Court finds them to conform with the administrative record:

Jungblut testified he purchased the property in December of 2003. However, records show a sale date of November 5, 2004, for $75,900 (between $7,200 and $7,300 an acre). At the time, agricultural land was selling county-wide for under $2,900 an acre. Jungblut obtained a construction loan in November of 2004 for the purchase of the Property and to construct the dwelling for $392,000. An additional loan was obtained in June of 2005 for $100,000. However, Jungblut did not draw the entire amount of the second loan and the final mortgage amount was $424,000. Later, Jungblut took out a home equity loan with another lender, raising his total indebtedness to $465,000.

In April of 2006, Jungblut entered into an agreement with a local farmer to plant, till, and fertilize a portion of the Property for alfalfa hay production. Jungblut entered into a purchase agreement with another farmer to cut, bale, stack, and purchase the hay. In 2006, the hay yielded

three cuttings. Under the terms of the agreement, the cutting farmer could keep up to 50% of the hay and Jungblut could keep up to 10-15% of the cut.[1]

In 2006, Jungblut started building a barn on the Property. The barn is used for hay storage and horse stalls. The stalls were added to the barn starting in June of 2007.[2] Fencing, a waterline, and electricity for the barn were installed and metered separately. Approximately one and a half to two acres are used for the barn and pasture. Approximately 70% of the Property is used for hay production, 10% for the barn and horses, 10% is woodland, and 10% is occupied by the dwelling.

In December of 2007, Jungblut purchased a pedigree Percheron stallion with the intent to use the stallion for breeding. The stallion was foaled on May 14, 2007, and will first produce viable sperm for breeding in May of 2009 at the earliest. In addition, Jungblut purchased a half-Arabian, half-Pinto mare, foaled April 5, 2004, for planned breeding. Once the mare and stallion are used for breeding, Junbglut expects revenue of $600–1000 for the stallion per breeding and $600–900 for the mare.

Jungblut's wife has owned a Lippold-Morgan mare, foaled May 1997, since before the marriage. The two mares were previously boarded, but brought to the Property in December 2005 or January 2006.

Sometime between April and June 2006, Jungblut applied for the Direct and Counter-Cyclical Program ("DCP") with the USDA Farm Services. A USDA farm number was assigned to the Property and Jungblut in 2006. Under the program, Jungblut had to reserve the land for

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[1] The PAAB found Jungblut was able to keep 50% of the hay. However, this is not so. According to Jungblut's testimony, the farmer, Mr. Pasture, was to receive 50% of the hay for cutting it and the remaining 50% would be sold—unless Jungblut exercised his option to keep 10-15% for his own use. PAAB Tr. 45:21–46:16.

[2] Jungblut testified work on the stalls began "summer of 2007." He stated June 2007 as a likely date. However, a photograph in the administrative records shows a date of "SEPT 07" on some of the wood used in the stalls. Resp't Ex. 17. However, this difference is immaterial—regardless, the stalls were put in after the January 1, 2007, assessment. The PAAB noted in its decision this change happened after the assessment date.

grow-able crop and can not use the land for building or other modification. In 2006 and 2007, Jungblut received $119 in government subsidy through DCP.

Jungblut's 2006 federal income tax Schedule F, Profit or Loss from Farming, showed a loss from agricultural activities, due in part to the following: rain destroying two cuttings of hay, delay for barn construction, stallion not yet producing viable sperm for breeding, section 179 expenses for site improvement, and depreciation. Additionally, Schedule F indicated over $5,000 in loss attributable to the destruction of a truck by fire. The schedule also indicated expenses incurred in producing hay and raising the horses.

At the evidentiary hearing, Jungblut identified seven neighboring agricultural parcels ranging from 33.71 to 99.39 acres. Jungblut asked the assessor to consider these parcels, as he believed they supported his request for an agricultural classification.

Polk County Deputy Assessor Randy Ripperger ("Ripperger") testified the Iowa Administrative Code provides guidelines for classifying agricultural property. In order to be classified as such, the property must be primarily used for an agricultural purpose in good faith which is intended to turn a profit as of January 1st of the assessment year. It was Ripperger's opinion the Property was properly classified as agricultural, as there was no intent to turn a profit due to the small size of the parcel, sale price, amount of gross revenue generated, and the encumbrance of the mortgage. Ripperger further opined the property would be viewed as residential in the market place.

Ripperger testified there are between 5,900 and 6,000 parcels in the county that are between one and eleven acres in size, and approximately 350 of those are classified as agricultural. The rest are residential. Ripperger identified similarly-sized parcels in the surrounding area classified as rural residential as evidence the Property conformed to the

residences in the area. However, Ripperger could not state whether or not these properties had hay or horses on them.

Ripperger conceded the Property had two uses: residential and agricultural. Ripperger had not himself ever visited or inspected the property, but did not dispute the alfalfa production, horse barn, pasture, and outbuildings were agricultural uses. However, the guidelines only allow for one classification per property and Ripperger felt residential was the primary use. Even so, a dwelling on an agriculturally classified parcel would be separately valued as a dwelling under the rules.

Ripperger recited a qualifying test from the Assessor's Agricultural Classification Guidelines which allows for small acreages with dwellings to be classified as agricultural. "For example, if a parcel is at least ten acres and 80 percent is being farmed in good faith for profit, even if it is also the site of a residential dwelling, it should be classified as agricultural." PAAB Tr. 105:9–12. The Administrative Code does not prescribe a minimum acreage or farmed percentage necessary to qualify a parcel as agricultural.

Notes in the assessor's field review analysis suggest the office used an income analysis in determining the classification, stating "[t]he residential portion of the property could be expected to produce at minimum $12,000 per year, which is $1000 a month." PAAB Tr. 108:1–3. At the hearing, Ripperger confirmed the income potential of the property was considered, but stated this method was only used in determining whether the use was being made in good faith. Ripperger acknowledged the income potential of the property, if used for another use, was used to determine what the income could be and was compared to the income generated by the agricultural use.

Ripperger further opined at the hearing farms are usually larger in size than the Property and it would be difficult to turn a profit with a small piece of land. He conceded most family farms have a dwelling and therefore some residential use, but stated those farms usually have a larger piece of land involved in farming operations. Ripperger felt the small amount of land dedicated to hay production does not demonstrate earning capacity. He stated a property owner must demonstrate they are intending to make a profit from agricultural operations considering the potential income and expenses, although most farms don't profit every year.

Based on these facts and the Administrative Code, the PAAB found the Property should be classified as agricultural. It concluded the Property was used for hay ground, pastureland, and a horse barn as of January 1, 2007, despite the addition of outbuildings and the stallion occurring after that date. The PAAB declined to rely on the *Colvin* factors cited by the assessor, stating the validity of the factors had not yet been decided. Further, the PAAB refused to consider the income potential of the Property if used for residential rental purposes as a manner of determining the classification.

STANDARD OF REVIEW

On judicial review of agency action, the district court functions in an appellate capacity to apply the standards of the Iowa Administrative Procedure Act, Chapter 17A of the Iowa Code. *Iowa Planners Network v. Iowa State Commerce Comm'n*, 373 N.W.2d 106, 108 (Iowa 1985). Accordingly, a district court's review of an agency finding is at law and is not de novo. *Harlan v. Iowa Dep't of Job Serv.*, 350 N.W.2d 192, 193 (Iowa 1984).

The Court may affirm the agency decision or remand to the agency for further proceedings. Iowa Code § 17A.19(10) (2009). The Court "shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it

determines that substantial rights of the person seeking judicial relief have been prejudiced" for any of the grounds listed under Iowa Code section 17A.19(10).

The applicable standard of review depends upon the nature of the error claimed in the petition. If the petitioner claims the error lies with the agency's findings of fact, the proper question on review is whether the substantial evidence supports those findings. *Meyer v. I.B.P.*, 710 N.W.2d 213, 219 (Iowa 2006). If the petitioner does not challenge the agency's findings of fact but rather claims the error lies with the agency's interpretation of the law, the question on review is whether the agency's interpretation was erroneous and the Court may substitute its interpretation for that of the agency. *Id.* (citations omitted). Finally, if the petitioner does not challenge the agency's findings of fact or interpretation of the law, but claims the error lies with the ultimate conclusion reached, then the challenge is to the agency's application of the law to the facts. In that case, the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence. *Id.* (citing Iowa Code § 17A.19(10)(i), (j)).

The Court shall reverse, modify or grant other appropriate relief from the challenged action if it was "[b]ased upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole." Iowa Code § 17A.19(10)(f). Substantial evidence means "the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance." *Id.* at § 17A.19(10)(f)(1).

> Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings. Conversely, evidence is not insubstantial merely

> because it would have supported contrary inferences. Nor is evidence insubstantial because of the possibility of drawing two inconsistent conclusions from it. The ultimate question is not whether the evidence supports a different finding but whether the evidence supports the findings actually made.

Reed v. Iowa Dep't of Transp., 478 N.W.2d 844, 846 (Iowa 1992) (citations omitted). In viewing the record as a whole, the Court must consider any determination of veracity made by the agency fact finder who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact. Iowa Code § 17A.19(10)(f)(3). The Court must give appropriate deference to the agency's findings "[w]here the evidence is in conflict or where reasonable minds might disagree about the conclusion to be drawn from the evidence." *Freeland v. Employment Appeal Bd.*, 492 N.W.2d 193, 197 (Iowa 1992).

The application of the law to the facts can be affected by other grounds of error such as erroneous interpretation of law, irrational reasoning, failure to consider relevant facts, or irrational, illogical, or wholly unjustifiable application of law to fact. *Meyer,* 710 N.W.2d at 218–19; *see* Iowa Code § 17A.19(10)(c), (i), (j), (m). The Court allocates some degree of discretion to the agency in its review of this question, but not the breadth of discretion given to the agency's findings of fact. *Meyer*, 710 N.W.2d at 219.

The Court shall reverse, modify, or grant appropriate relief if the agency action is "based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(10)(c). The Court shall not give deference to the view of the agency with respect to particular matters that have not been vested by a provision of law in the discretion of the agency. *Id.* at § 17A.19(11)(b). However, appropriate deference is given when the contrary is true. *Id.* at § 17A.19(11)(c). Where the interpretation of a particular provision of law has been clearly vested

in the discretion of the agency, the agency's interpretation may only be reversed if it is irrational, illogical, or wholly unjustifiable. *Id.* at § 17A.19(10)(l). The commissioner's findings are binding on appeal unless a contrary result is compelled as a matter of law. *Ward v. Iowa Dep't of Transp.*, 304 N.W.2d 236, 237–38 (Iowa 1981).

Finally, the Court shall reverse, modify, or grant appropriate relief to the petitioner if the agency's decision was unreasonable, arbitrary, capricious, or an abuse of discretion. Iowa Code § 17A.19(10)(n). "An abuse of discretion is synonymous with unreasonableness. Unreasonableness is defined as 'action in the face of evidence as to which there is no room for a difference of opinion among reasonable minds or not based on substantial evidence.'" *Burns v. Bd. of Nursing*, 528 N.W.2d 602, 604–05 (Iowa 1995) (quoting *Frank v. Iowa Dep't of Transp.*, 386 N.W.2d 86, 87 (Iowa 1986)). "'Arbitrary' and 'capricious' are practically synonymous; both mean an agency decision taken without regard to law or the facts of the case." *Office of Consumer Advocate v. Iowa State Commerce Comm'n*, 432 N.W.2d 148, 154 (Iowa 1988). The Iowa Supreme Court has held "an agency is free to exercise its expertise within a reasonable range of informed discretion. Discretion is abused when it is exercised on clearly untenable grounds or to a clearly unreasonable extent." *Equal Access Corp. v. Utils. Bd.*, 510 N.W.2d 147, 151 (Iowa 1993).

The burden of showing the required prejudice and the invalidity of agency action is on the party asserting invalidity. Iowa Code § 17A.19(8)(a). The Court is required make a separate and distinct ruling on each material issue on which the court's decision is based. *Id.* at § 17A.19(9).

ANALYSIS

The Board, in its petition for judicial review, argues the classification of the Property should remain residential and therefore the PAAB's ruling should be reversed. Specifically, the Board argues: (1) the PAAB's decision was not supported by substantial evidence; (2) the decision was based on an erroneous interpretation of Iowa Administrative Code rules 701—71.1(1) and (3); and (3) the PAAB abused its discretion by employing wholly irrational reasoning and ignoring the relevant and important evidence, resulting in a decision that was based on an irrational, illogical, or wholly unjustifiable application of law to fact or was otherwise arbitrary and capricious. The Board's arguments are based upon assertions the agricultural operations on the property were not in good faith intended to result in a profit.

The PAAB is an agency governed by the Iowa Administrative Procedure Act. As a statewide property assessment appeal board, the PAAB is an agency pursuant to Iowa Code section 17A.2(1), which defines an agency as "each *board*, commission, department, officer or other administrative officer or unit of the state." Iowa Code § 17A.2(1) (emphasis added); *see id.* at § 421.1A(1). The PAAB is vested with the authority to "review any final decision, finding, ruling, determination, or order of a local board of review relating to protests of an assessment, valuation, or application of an equalization order." *Id.* at § 421.1A(3). It hears appeals from boards of review de novo and "determine[s] anew all questions arising before the local board of review which relate to the liability of the property to assessment of amount thereof." *Id.* at § 441.37A(3)(a). It may use its "experience, technical competence, and specialized knowledge in evaluating the evidence." *Id.* at § 17A.14(5). Therefore, the Court must defer readily to the PAAB's expertise. *Empire Cable of Iowa, Inc. v. Iowa Dep't of Revenue & Finance*, 507 N.W.2d 705, 707 (Iowa Ct. App. 1993).

As already discussed, this case is based upon an appeal of the PAAB's review of a decision by the Polk County Assessor's Office, classifying the Property as residential. Assessors are given the responsibility to classify real property from Iowa Administrative Code rule 701–71.1(1). Under this rule,

> [a]ll real estate subject to assessment by city and county assessors shall be classified as provided in this rule. It shall be the responsibility of city and county assessors to determine the proper classification of real estate. There can be only one classification per property. . . . . The determination shall be based upon the best judgment of the assessor following the guidelines set forth in this rule and the status of the real estate as of January 1 of the year in which the assessment is made. The assessor shall classify . . . property according to its present use.

Iowa Admin. Code r. 701—71.1(1) (2008). However, the assessor's determination is subject to review—it "does not exist in a vacuum, . . . it must be exercised following the guidelines set out by the Iowa Administrative Code." *Sult v. Polk County Bd. of Review*, No. CVCV4841, at 7 (Iowa 5th Dist. Polk Co. Dec. 23, 2004). Not only must the assessor abide by these guidelines, but the boards of review must as well. Iowa Admin. Code. r. 701–71.1(2).

Under the rule, agricultural real estate is defined as

> all tracts of land and the improvements and structures located on them which are in *good faith used primarily* for agricultural purposes except buildings which are primarily used or intended for human habitation . . . . [I]t shall be considered used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forests or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for *intended profit*.

Id. at 701—71.1(3) (emphasis added). The terms "good faith" and "primarily" are not defined in the Administrative Code. The existence of a dwelling on property does not disqualify the property from being classified as agricultural. *Id.* at 701—71.1(3)–(4).

1. *Was the PAAB's decision supported by substantial evidence?*

First, the Board argues the PAAB's decision was not supported by substantial evidence. The Board argues that although the assessor determined there were two actual present uses

(residential and agricultural), the evidence does not support a finding agricultural was the primary use. The Board based this assertion on the case of *Colvin v. Story County Board of Review*, 653 N.W.2d 345 (Iowa 2002), and the "factors" it developed. However, the Court, like the PAAB, finds these factors to be inapplicable as the issue of good faith did not reach the court in *Colvin*.[3] These factors are not mandatory, as *Colvin* states the factors *may* be looked at in *addition* to actual use. *Colvin*, 653 N.W.2d at 350. Furthermore, the PAAB stated even had it used these non-mandatory factors, it would have reached the same conclusion.

The Court recited the facts found by the PAAB in this ruling. These facts were found after a full evidentiary hearing where the parties were given the opportunity to engage in full discovery. The Board's argument the PAAB did not hear the case anew has no merit. Those facts found show the PAAB based its decision on the facts as they existed as of January 1, 2007. No weight was placed on facts showing future agricultural use (e.g., the Percheron stallion). The PAAB's finding of facts are supported by the administrative record.

The Board's brief attempts to convince the Court the facts should be reexamined—this is not the Court's role in judicial review. Viewing the record as a whole, it is clear to the Court substantial evidence existed upon which the PAAB based its decision. A reasonable person, when viewing such evidence, could accept the findings of the PAAB. *Heartland Express, Inc. v. Terry*, 631 N.W.2d 260, 265 (Iowa 2001). A substantial portion of the Property was dedicated to hay production and livestock use as of January 1, 2007, even without the horse breeding operation in place. One could draw the conclusion from these facts, even with the mortgages on the Property, that Jungblut was using the property for agricultural purposes in good faith with the

[3] The Board cites *DFCA, Inc. v. Downing*, No. 07-1871, 2008 WL 4877049 (Iowa Ct. App. Nov. 13, 2008), as support for the application of the *Colvin* factors, stating the Court of Appeals confirmed the use of those factors in determining if good faith exists. However, *DFCA* was decided in November of 2008—after both the decision of the PAAB and the filing of the Board's petition. Therefore, this holding is inapplicable to this current matter.

intent to profit. It does not matter a different conclusion may have also been reached—so long as the evidence supports the finding that was made, it is substantial. *Reed v. Iowa Dep't of Transp.*, 478 N.W.2d 844, 846 (Iowa 1991). It is not the Court's role to determine if one piece of evidence "trumps" another, "weaker" piece of evidence. *Arndt v. City of Le Claire*, 728 N.W.2d 389, 394–95 (Iowa 2007). Therefore, the PAAB's decision shall not be reversed on the basis of substantial evidence.

2. *Was the PAAB's decision based on an erroneous interpretation of Rule 701–71.1(1) and (3)?*

Next, the Board argues the PAAB erroneously interpreted the administrative rules governing assessment. In viewing the record, the Court does not see any erroneous interpretation of rule 701–71.1 and its subparts being performed by the PAAB. The PAAB applied the facts to these rules pursuant to the PAAB's clearly vested authority to do so. The only possible "interpretation" done by the PAAB was holding the *Colvin* factors to not apply and holding income analysis was not proper, according to *Sult*. Even should there have been an issue of interpretation of rule 701—71.1, this matter has been vested by a provision of law in the discretion of the PAAB and as such the Court gives deference to its interpretations. All law applied in this matter was the appropriate, applicable law and was not interpreted erroneously but in accordance with agency precedent and the PAAB's vested authority.

In its petition, the Board refers to an "erroneous application of law to fact" rather than erroneous interpretation as argued in their brief. Again, the Court finds no erroneous application of law to fact. The PAAB based its decision only on those facts in existence at the time of the assessment (January 1, 2007) and the Court gives deference to its application of those facts. The Board attempts to argue the PAAB should have given certain facts more weight when applying them to the law—such as the income potential of the Property as a residential rental, the size of

the Property, the *Colvin* factors, and the lack of current agricultural profit. Again, it is not the Court's duty to weigh this evidence or assess the credibility of the witnesses. In viewing the record as a whole and the applicable law, the Court holds the PAAB's application of law to fact was proper and there was no erroneous interpretation of law.

3. *Did the PAAB abuse its discretion and is its decision irrational, illogical, or wholly unjustifiable?*

Finally, the Board argues the PAAB abused its discretion and its determination was irrational, illogical, or wholly unjustifiable. Reviewing the PAAB's decision, the Court finds a very well thought-out determination, supported by case law and administrative rules. The decision follows the applicable law in a logical manner. A reasonable person could have reached the same conclusion from the evidence. There was no abuse of discretion and the determination is reasonable.

Accordingly, the decision of the PAAB shall be affirmed and the Board's petition denied. Substantial evidence supports the PAAB's decision and the decision involved a proper application of law to the facts. Furthermore, the decision was reasonable and logical. There was no abuse of discretion.

ORDER

IT IS THE ORDER OF THE COURT that the Decision of the Property Assessment Appeal Board is **AFFIRMED.**

IT IS SO ORDERED this 10th day of September, 2009.

Robert B. Hanson

ROBERT B. HANSON, JUDGE

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